Sulaiman bin Hamat v Public Prosecutor

A

COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NO C-05–69 OF 2010
KN SEGARA, ABDUL WAHAB PATAIL AND AZAHAR MOHAMED JJCA
30 JANUARY 2012

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C

Criminal Law — Penal Code — s 302 — Murder — Conviction and sentence — Appeal against — Whether death caused by accused — Information leading to fact discovered — Information given by accused while in police custody — Whether irresistibly pointed to guilt of appellant — Whether prosecution proved case beyond reasonable doubt

D

Evidence — Admissibility — Information leading to fact discovered — Information given by accused while in police custody — Whether admissible — Principles applicable — Evidence Act 1950 s 27

E

The appellant appealed to this court against conviction and sentence of death imposed by the High Court on a charge of murder under s 302 of the Penal Code. In this case, one Chew Fook Yeem lodged a police report of a missing person namely, his wife, the deceased, who failed to arrive at his sundry shop. Subsequently, he received a telephone call from someone he did not know who informed him that the deceased was with him and asked for RM10,000 as ransom. He placed RM5,000 in RM100 denominations, the serial numbers of which had been recorded by the police, at the place directed by the caller. The police arrested the appellant, who at the time of the arrest had in his possession 30 pieces of the aforesaid RM100 currency notes. Subsequent to his arrest, the appellant gave the information, recorded in various police reports, leading and pertaining to the discovery of the body of the deceased. The appellant's grounds of appeal was concerning the application of s 27 of the Evidence Act 1950 ('Act') on relevancy of facts, in particular, the admissions and confessions made by the appellant while in the custody of the police. It was contended that the learned judge had accepted the reports in total when the only admissible evidence were statements leading to the discovery and the rest ought to have been discarded. It was further contended that there were several deficiencies in the exhibits tendered.

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Held, dismissing the appeal and affirming the conviction and sentence:

(1) In the plain language of s 27 of the Act, it was clear that the Legislature intended that s 27 is applicable whether the information from a person

who is accused of an offence, given while in custody, amounts to a confession or not. Section 27, therefore cannot be dismissed as not artistically worded. The question whether it is unfair or not is no longer the issue. In the scope encompassed by s 27, the fact discovered from the information so provided by itself proves the reliability of the information provided, and the true issue was whether the information was provided by the accused while he was in custody, or not (see para 13).

(2) In this case, the information provided by the appellant led to the discovery of the place where the body of the deceased was thrown into and the body itself (exhs P16 and P17, respectively); the shop where the appellant sold the jewelry belonging to the deceased (exhs P81 and P82); the TV and DVD that the appellant bought, and the shirt, trousers and shoes he wore at the time of the alleged offence (exhs P98 and P99); and the public telephones he used and the places he picked up the money paid (exhs P164 and P165). The impugned parts of the statements were clearly necessary part and parcel of the information given, linking the fact to the offence being investigated (see para 15).

(3) The cautioned statement was admitted subject to cross-examination. When the maker of it was not called, it became of no probative value. It is not a case of denial of an opportunity to cross-examine. As to the other deficiencies, the relevant witnesses were called and could have been cross-examined thereon if the point was material. Where it is only raised on an appeal, it is an afterthought that cannot be considered when the opportunity to examine it earlier was not exercised (see para 27).

[Bahasa Malaysia summary

Perayu merayu ke mahkamah ini terhadap sabitan dan hukuman mati yang diberikan oleh Mahkamah Tinggi bagi pertuduhan membunuh di bawah s 302 Kanun Keseksaan. Di dalam kes ini, seorang yang bernama Chew Fook Yeem membuat laporan polis mengenai orang hilang iaitu isterinya, si mati, yang gagal sampai ke kedai runcitnya. Kemudian, dia menerima satu panggilan telefon daripada seseorang yang tidak dikenalinya memberitahunya bahawa si mati berada bersamanya dan meminta wang tebusan RM10,000. Dia meletakkan RM5,000 dalam pecahan RM100, yang nombor sirinya telah direkodkan oleh pihak polis, di tempat yang diarahkan oleh pemanggil. Pihak polis menangkap perayu, yang pada masa tangkapannya mempunyai dalam milikannya 30 helai wang kertas RM100. Selepas tangkapannya, perayu memberikan maklumat yang direkodkan dalam beberapa laporan polis, menjurus dan berkaitan dengan penemuan mayat si mati. Alasan rayuan perayu adalah berkaitan dengan aplikasi s 27 Akta Keterangan 1950 ('Akta') atas kerelevanan fakta, khususnya, pengakuan dan kenyataan pengakuan bersalah oleh perayu semasa di dalam kawalan polis. Dihujahkan bahawa hakim yang bijaksana telah menerima laporan-laporan tersebut secara keseluruhannya apabila satu-satunya keterangan yang boleh diterima adalah

keterangan kenyataan-kenyataan yang menjurus kepada penemuan tersebut dan yang lainnya perlu dibuang. Selanjutnya dihujahkan bahawa terdapat beberapa kekurangan dalam ekshibit-ekshibit yang dikemukakan.

Diputuskan, menolak rayuan dan mengesahkan sabitan dan hukuman:

(1) Dalam bahasa jelas s 27 Akta, adalah jelas bahawa Perundangan meniatkan bahawa s 27 terpakai sama ada maklumat daripada seseorang yang dituduh dengan sesuatu kesalahan, diberikan semasa dalam kawalan, membentuk pengakuan atau tidak. Seksyen 27, oleh itu, tidak boleh ditolak sebagai dinyatakan sebagai artistik. Persoalan sama ada adil atau tidak, bukan lagi menjadi isu. Dalam skop yang dirangkumi oleh s 27, fakta yang ditemui daripada maklumat yang diberikan dengan sendirinya membuktikan kebolehpercayaan maklumat yang diberikan, dan isu sebenar adalah sama ada maklumat tersebut diberikan oleh tertuduh semasa dalam kawalan, atau tidak (lihat perenggan 13).

(2) Di dalam kes ini, maklumat yang diberikan oleh perayu menjurus kepada penemuan tempat di mana mayat si mati telah dibuang dan ia adalah mayat si mati (masing-masing eksh P16 dan P17); kedai di mana perayu menjual barang kemas kepunyaan si mati (eksh P81 dan P82); TV dan DVD yang dibeli oleh perayu, dan baju, seluar dan kasut yang dipakainya pada masa kesalahan yang didakwa (eksh P98 dan P99); dan telefon awam yang digunakannya dan tempat di mana dia mengutip wang yang dibayar (eksh P164 dan P165). Bahagian yang dipersoalkan dalam kenyataan adalah jelas sebahagian maklumat yang diberikan, mengaitkan fakta kepada kesalahan yang disiasat (lihat perenggan 15).

(3) Kenyataan beramaran diterima tertakluk kepada pemeriksaan balas. Apabila pembuatnya tidak dipanggil, ia menjadi tidak bernilai probatif. Ia bukan kes penafian peluang untuk memeriksa balas. Berkaitan dengan kekurangan lain, saksi-saksi relevan telah dipanggil dan mungkin telah diperiksa balas jika isu tersebut penting. Di mana ia dibangkitkan hanya dalam rayuan, ia adalah fikiran semula dan tidak boleh dipertimbangkan apabila peluang untuk memeriksanya lebih awal tidak dilaksanakan (lihat perenggan 27).]

Notes

For cases on admissibility in general, see 7(1) *Mallal's Diegst* (4th Ed, 2011 Reissue) paras 94–99.

For cases on s 302 of the Penal Code, see 4 *Mallal's Digest* (4th Ed, 2010 Reissue) paras 1698–1776.

Cases referred to

Lam Chi Ming & Ors v R [1991] 3 All ER 172, PC (refd)

PP v Bash bin Salihin [1994] 2 MLJ 476; [1993] 1 CLJ 420, HC (refd)

A *R v Sang* [1979] 2 All ER 1222, HL (refd)

Legislation referred to

Evidence Act 1950 s 27
Penal Code s 302

B

Appeal from: Criminal No 45–7 of 2006 (High Court, Kuantan)

Ibrahim bin Kamaruddin (Muhd Hisham bin Abd Rahim with him) (Ibrahim Kamaruddin & Associates) for the appelant.

C *Nurul Huda Nur'aini bt Mohd (Deputy Public Prosecutor, Attorney General's Department) for the respondent.*

Abdul Wahab Patail JCA (delivering judgment of the court):

D

[1] The appellant Sulaiman bin Hamat was tried, convicted and sentenced to the penalty provided by law under the following charge:

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> Bahawa kamu, di antara tarikh 22/5/2006, jam lebih kurang 9.00 pagi hingga tarikh 29/5/2006, jam lebih kurang 7.00 malam, di kawasan belukar Kampung Anak Air, Peramu, di dalam Daerah Kuantan di dalam Negeri Pahang Darul Makmur, telah melakukan pembunuhan ke atas Wong Geet Yin, KP: 560912-065356, maka kamu dengan ini telah melakukan suatu kesalahan yang boleh dihukum di bawah seksyen 302 Kanun Keseksaan.

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[2] He has appealed to this court against both conviction and sentence.

[3] He had set out five grounds of appeal in his petition of appeal. For the G purposes of submissions, the grounds were addressed in three groups, being grounds 1 and 2, grounds 3 and 4 and ground 5.

[4] Before proceeding to the grounds of appeal, we set out a brief background H of this case.

BRIEF BACKGROUND

[5] At 1.10am on 24 May 2006, one Chew Fook Yeem lodged in Kuantan a I police report 8883/06 that his wife Wong Geek Yin did not arrive at his 'kedai runcit' C&T Shop at 11am on 22 May 2006 as she was supposed to, all their relatives did not know where she was, and at about 3pm on 22 May 2006 he received a telephone call from someone he did not know who informed him that Wong Geek Yin was with him and asked for RM10,000.

[6] On 25 May 2006 at about 9pm he placed RM5,000 in RM100 denomination the serial numbers of which had been recorded by the police, at the place directed by the caller.

[7] On 29 May 2006, the police arrested the appellant in front of Restoran Tomyam, Jalan Pantai Sepat, Simpang Kampong Sungai Soi, Kuantan. He had in his possession 30 pieces of the aforesaid RM100 currency notes.

[8] Subsequent to his arrest, the appellant gave the information recorded in various police reports leading and pertaining to the discovery of the body of the missing Wong Geek Yin.

GROUNDS 1 AND 2

[9] Grounds 1 and 2 concern the application of s 27 of the Evidence Act 1950 on relevancy of facts, in particular admissions and confessions. The appellant was, at all the material times pertaining to the application of s 27, in the custody of the police.

[10] The evidence now sought to be impugned under s 27 are contained in police reports produced as the following exhibits:

(a) exh P16 RR6:59 Police Report 29/5/2006 2310 hrs;

(b) exh P17 RR6:60 Police Report 29/5/2006 2330 hrs;

(c) exh P81 RR6:102 30/5/2006 ~~0420 hrs~~ 1240 hrs;

(d) exh P82 RR6:103 30/5/2006 ~~0445 hrs~~ 1330 hrs;

(e) exh P98 RR6:108 30/5/2006 1810 hrs;

(f) exh P99 RR6:109 30/5/2006 1820 hrs;

(g) exh P164 RR6:223 31/5/2006 1700 hrs;

(h) exh P165 RR6:224 31/5/2006 1945 hrs;

(i) exh P166 RR6:225 2/6/2006 1055 hrs;

(j) exh P167 RR6:226 2/6/2006 1255 hrs;

(k) exh P168 RR6:227 2/6/2006 1305 hrs; and

(l) exh P170 RR6:229 2/6/2006 1815 hrs.

[11] Before us, it was submitted the learned judge had accepted the reports above in toto when the only admissible evidence are statements leading to the discovery and the rest ought to be discarded.

It was submitted that the crossed out words below are inadmissible and ought to be excluded:

(a) exh P16:

> Pada jam lebih kurang 1800 hrs 29/05/06 saya bersama D/Sjn 112021 dan L/Kpl/T 11291 telah buat soal siasat di bilik UTC Jalan Lim Hoe Lek Kuantan keatas saspek nama Sulaiman bin Hamat, Kpt: 7106141 bersangkut Ktn. Rpt: 8883/06 dan sebelum itu saya telah bacakan rakaman percakapan beramaran dibawah sek 113 KPJ yang berbunyi:
>
> > Adalah menjadi kewajipan saya beri amaran kepada kamu bahawa kamu tidak diwajipkan berkata-kata apa-apa jua atau menjawab apa-apa soalan, tetapi apa jua yang kamu katakan sebagai jawapan sesuatu soalan atau tidak, boleh dijadikan sebagai keterangan.
>
> Setelah saspek memahami lalu saspek berkata, 'Encik, perempuan Cina ~~yang saya culik tempoh hari telah saya tumbuk dan ikat tangannya lalu saya buang tubuh mangsa~~ di kawasan belukar, Kampung Anak Air Peramu, Kuantan dan saya boleh tunjukkan'. Saya jadikan ini sebagai maklumat. Inilah pengaduan saya.

(b) exh P17:

> Pada jam lebih kurang 1900 hrs 29/05/06 saya bersama D/Sjn 112021, L/Kpl 101652, 135775, 143331, 143136, 145529, 146016 dan L/Kpl/T 11291 dengan diiringi saspek nama Sulaiman Bin Hamat, Kpt: 710614-035205 telah sampai di kawasan belukar Kampung Anak Air Peramu, Kuantan dan saspek telah tunjukkan satu rangka manusia dan berkata itulah perempuan Cina yang saya katakan tadi.
> Saya bersama anggota telah menjumpai satu rangka manusia didalam kawasan belukar tersebut.
> Inilah pengaduan saya.

(c) exh P81:

> Pada jam lebih kurang 1245 hrs 30/5/2006 saya bersama Sjn 59577 telah jalankan soal siasat terhadap OYDS nama Sulaiman bin Hamat KPT: 710614-03-5205 bersangkut Kuantan Rpt: 8883/06 di Pejabat URJ, IPD Kuantan, Pahang. Sebelum itu saya telah bacakan percakapan beramaran menurut sek 113 Kanun Prosedur Jenayah ke atas OYDS yang berbunyi seperti berikut:
>
> > Adalah menjadi kewajipan saya memberi amaran kepada kamu bahawa kamu tidak diwajibkan berkata apa-apa jua atau menjawab apa-apa soalan, tetapi apa jua yang kamu katakan samada sebagai jawapan kepada suatu soalan atau tidak, boleh diberikan sebagai keterangan.

Setelah OYDS faham lalu OYDS beritahu, 'Barang-barang kemas yang dipakai olih perempuan Cina ~~yang saya colek dan pukul tempoh hari telah saya ambil dan dijualkan~~ dikedai Emas Sin Hin Jin Bukit Ubi, saya boleh tunjukkan tempatnya'. Saya seterusnya jadikan pernyataan ini sebagai maklumat. Inilah pengaduan saya.

(d) exh P98:

Pada jam lebih kurang 1700 hrs 30/5/2006 saya bersama Kpl 59574, dan Konst 148235 telah jalankan soalsiasat terhadap OYDS nama Sulaiman Bin Hamat, Kpt: 710614-03-5205 bersangkut Kuantan Rpt: 8883/06 di Pejabat URJ, IPD Kuantan, Pahang. Sebelum itu saya telah bacakan percakapan beramaran menurut sek 113 Kanun Prosedur Jenayah ke atas OYDS yang berbunyi seperti berikut:

> Adalah menjadi kewajipan saya memberi amaran kepada kamu bahawa, kamu tidak diwajibkan berkata apa-apa jua atau menjawab apa-apa soalan, tetapi apa jua yang kamu katakan samada sebagai jawapan kepada suatu soalan atau tidak, boleh diberikan sebagai keterangan.

Setelah OYDS faham lalu OYDS beritahu, '~~Daripada hasil wang yang saya perolehi dari suami mangsa yang saya culik dan pukul telah saya beli satu TV dan satu DVD serta baju, seluar dan kasut yang saya pakai semasa kejadian tersebut juga berada di bilik sewa saya di alamat Ting, atas rumah No E-505 Jin Wong Ah Jang. Saya boleh tunjukkan~~'. Saya jadikan ini sebagai maklumat. Inilah laporan saya.

(e) exh P99:

Bertindak di atas maklumat, pada jam lebih kurang 1730 hrs 30/05/2006 saya bersama Kpl: 59574, 107955 dan Konst 143976, 148235 dengan diiringi oleh OYDS nama Sulaiman Bin Hamat, Kpt No: 710614-03-5205 telah sampai di rumah No. E 505, Jin. Wong Ah Jang, 25100 Kuantan Pahang dan OYDS telah tunjukkan saya satu TV 14 inci jenis 'TOBISHI', satu DVD jenis 'MATSUDA', yang berada didalam bilik sewanya iaitu tingkat atas dan berkata '~~Encik, itulah TV dan DVD yang saya maksudkan. Selepas itu OYDS telah tunjukkan kopada saya satu seluar, satu baju dan sepasang kasut yang juga berada di dalam bilik tersebut dan berkata inilah pakaian yang saya pakai semasa kejadian~~'.

> Saya telah membuat pemeriksaan dapati sehelai baju jenis MANDILU WEAR warna kelabu, seluar jenis jean Biru jenis GIVANO dan sepasang kasut jenis POWER. Kesemua barangan tersebut saya rampas untuk tindakan lanjut, dan sesalinan searchlist telah diserahkan kepada OYDS. Inilah laporan saya.

(f) exh P164:

> Pada jam lebih kurang 1610 hrs 31/05/2006 saya bersama Konst. 143080 telah buat pertanyaan terhadap OYDS nama Sulaiman bin Hamat, KPT: 710614-03-5205 berkait Kuantan Rpt: 8883/06 di Pejabat URJ, IPD Kuantan, Pahang. Mengenal tempat-tempat Talipon Awam, tempat mengambil wang dan tempat-tempat yang terlibat dalam kes tersebut. Sebelum pada itu saya telah bacakan percakapan beramaran menurut sek 113 Kanun Prosedur Jenayah keatas OYDS yang berbunyi seperti berikut:
>
> > Adalah menjadi kewajipan saya memberi amaran kepada kamu bahawa, kamu tidak diwajibkan berkata apa-apa jua atau menjawab apa-apa soalan, tetapi apa jua yang kamu katakan samada sebagai jawapan kepada sesuatu soalan atau tidak. Boleh diberikan sebagai keterangan.
>
> Selepas dibaca OYDS faham lalu OYDS beritahu kepada saya 'Saya boleh tunjukkan dimana ~~tempat tempat talipon awam yang saya gunakan dan tempat tempat pengambilan wang dari suami simati~~'.
> Kemudian saya jadikan maklumat ini sebagai satu report. Inilah laporan saya.

(g) exh P165:

> Bertindak diatas maklumat sebagaimana KTN RPT:9335/06 antara jam lebih kurang 1630 hrs hingga 1845 hrs 31/05/2006 saya bersama KPL.84029, D/L/KPL: Mohd Noor (Jurugambar), L/KPL.123174, dan Konst. 143080 berkait Kuantan Rpt: 8883/06. Dengan dipandu arah oleh OYDS nama Sulaiman bin Hamat KPT: 710614-03-5205. ~~Telah menunjukkan kepada saya tempat-tempat kejadian dan pondok-pondok talipon awam serta tempat pengambilan wang dari suami si mati. Diantara tempat-tempatnya ialah:~~
>
> 1) ~~Tempat kereta mangsa ditinggalkan: Lot 19 Kg Peramu, Kuantan~~
>
> 2) ~~Tempat jual emas: Kedai Emas Sin Hin, Jalan Bukit Ubi, Kuantan.~~
>
> 3) ~~Tempat OYDS tumpang kereta mangsa: E 505, Jin Wong Ah Jang, Kuantan, Pahang.~~
>
> 4) ~~Talipon Awam, hadapan kedai Perabut Seng Heng, Jin Wong Ah Jang, Kuantan.~~
>
> 5) ~~Talipon Awam, Jalan Tun Ismail 1, Kuantan.~~

6) ~~Tempat ambil wang – Kuantan Plaza, Jin. Tun Ismail, Kuantan.~~

7) ~~Talipon Awam, Jalan Bukit Ubi Kuantan.~~

8) ~~Kedai M/Sikal di kemunting, Kuantan.~~

9) ~~Talipon Awam. No 46 Jln Tanah Puteh Baru, Kuantan.~~

10) ~~Tempat ambil wang di tiang talipon, Jalan Industri Tanah Puteh Baru, Kuantan.~~

11) ~~Talipon Awam, Hadapan rumah no 692, Lengkok Kanan 22, Tanah Puteh Baru, Kuantan.~~

12) ~~Talipon Awam dalam kawasan Sek Men Keb Tg Lumpur, Kuantan.~~

13) ~~Tempat OYDS menumbuk mangsa. Belakang Lips Boom Boom, Jin. Besar, Kuantan.~~

14) Semua tempat telah diambil gambar oleh D/L/KPL: Mohd Noor. Dalam pemeriksaan di tempat-tempat tersebut tiada sebarang tangkapan dan rampasan dibuat. Inilah laporan saya.

(h) exh P166:

Pada jam lebih kurang 1050 hrs 2/6/2006 saya bersama L/Kpl 123174 buat soalsiasat terhadap OYDS nama SULAIMAN BIN HAMAT KPT: 710614-03-5205 di Pejabat URJ, IPD Kuantan, Pahang. Sebelum itu saya telah bacakan rakaman percakapan beramaran ke atas OYDS yang berbunyi 'Adalah menjadi kewajipan saya memberi amaran kepada kamu bahawa kamu tidak diwajibkan berkata apa-apa jua atau menjawab apa-apa soalan, tetapi apa jua yang kamu katakan samada sebagai jawapan kepada suatu soalan atau tidak, boleh diberikan sebagai keterangan'. Setelah OYDS faham lalu ~~OYDS beritahu saya 'saya tumpang kereta nyonya dari rumah di Wong Ah Jang ke tempat kerja, sampai kastam saya tumbuk ditepi kepala dan nyonya pengsan, saya turun dan oari kayu dan pukul 3, 4 kali dikepala dan buang disitu, nyonya saya letak ditempat duduk belakang. Saya bawa kereta pergi ke kawasan hutan dan horet nyonya di kawasan hutan saya ikat tangan nyonya dongan tali dan saya ambil barang kemas. Saya keluar semula dan beli minyak petrol 2 ringgit isi dalam botol mineral besar di Petronas Peramu. Saya pergi balik ke hutan dan simbah nyonya dengan petrol dan saya terus baka dan botol~~

~~saya buang disitu dan terus beredar~~'. Maklumat ini saya jadi laporan Polis bersangkut Ktn Rpt 8883/06. Inilah laporan saya.

(i) exh P167:

Pada jam lebih kurang 1120 hrs 2/6/06 bertindak diatas maklumat bersangkut Ktn Rpt. 9434/06 saya bersama D/Kpl. Yusof, Kpl. 99335, L/Kpl. 118312 dan L/Kpl. 123174 dengan dipanduarah oleh OYDS nama SULAIMAN BIN HAMAT KTP: 710614-03-5205 ~~telah membawa saya ko tompat kejadian di kawasan hutan Kg Anak Air, Peramu, Kuantan. Sampai disana saya telah mengarahkan D/Kpl Yusof untuk mengambil kesan terbakar dipokok serta mengambil sample tanah di tempat mayat ditemui. Sebatang dahan pokok dan sample tanah saya bawa balik ke Balai Polis Kuantan bersangkut Ktn Rpt 8883/06~~. Inilah laporan saya.

[12] Section 27 provides as to how much of information received from an accused may be proved:

(1) When any fact is deposed to as discovered in consequence of information received from a person accused of any offence in the custody of a police officer, so much of that information, whether the information amounts to a confession or not, as relates distinctly to the fact thereby discovered may be proved.

[13] In an appeal from Hong Kong, the Privy Council in *Lam Chi Ming & Ors v R* [1991] 3 All ER 172 established that s 27 is not derived from any exception in the common law of England. The common law took the approach that the confession is inadmissible not because it is unreliable, since its reliability is established by what is found, but because to admit it would be unfair (see *R v Sang* [1979] 2 All ER 1222, p 1245). But in the jurisdictions that adopted s 27, their Legislatures had made a choice. In the Evidence Act 1950, the Legislature had made a policy decision. In the plain language of s 27, it is clear that the Legislature intends that s 27 is applicable whether the information from a person who is accused of an offence and given while in custody, amounts to a confession or not. Section 27, therefore cannot be dismissed as not artistically worded. The question whether it is unfair or not is no longer the issue. Hence, while it is right and proper that the courts must be cautious in its application, and the courts have been vigilant, it means the court must be cautious about the information and therefore examine its reliability. In the scope encompassed by s 27, the fact discovered from the information so provided by itself proves the reliability of the information provided, and the true issue is whether the information was provided by the accused and while he is in custody, or not.

[14] The information provided by the appellant in this case led to the discovery of the following facts: A

(a) the place where the body of the deceased was thrown into and the body itself (exh P16 and exh P17);

(b) the shop where the appellant sold the gold 'barang kemas' belonging to the deceased to (exh P81 and exh P82); B

(c) the TV and DVD that the appellant bought, and the shirt, trousers and shoes he wore at the time of the alleged offence (exh P98 and exh P99); and C

(d) the public telephones he used and the places he picked up the money paid (exh P164 and exh P165).

[15] The impugned parts of the statements were clearly necessary part and parcel of the information given, linking the fact to the offence being investigated. We observe that except in the case of exh P165, it was not submitted before us that the information was not provided by the appellant. D

[16] In the case of exh P165, it was suggested in submissions that maybe the words were not from the appellant. Examination of the record of evidence does not show that the accusation that the appellant did not provide this information was not put to P/ASP Shafee bin Samad 1/11200. A suggestion in submission founded upon a mere speculation cannot lead anywhere. It can only be dismissed. E F

[17] We examined exh P166. It did not lead to the discovery of any evidence, but the information recorded in exh P166 clearly relates to the discovery of the facts contained in the information. This is within the meaning and intent of s 27 because it refers to discovery of the fact, not discovery of the evidence. It is erroneous to read s 27 as pertaining to the discovery of evidence. G

[18] In the case of exh P167, it was submitted that the words showed that it was not the information but the accused who caused the discovery. In support of the submission, counsel relied upon *Public Prosecutor v Bash bin Salihin* [1994] 2 MLJ 476; [1993] 1 CLJ 420, that if a thing is already discovered, subsequent information by the accused is inadmissible, because it is no longer a 'discovery'. We accept this submission since the fact that it is the site where the body of the deceased was thrown by the appellant was already discovered. Consideration of the effect of admission of this inadmissible evidence necessarily requires an appreciation of what is in P167. We observe the facts were discovered under the information provided and recorded in exh P166. The effect of exh P167 is only that the appellant went with P/ASP Shafee bin H I

Abd Samad 1/11200 to the location to collect evidence samples. It does not in any way introduce any evidence that renders the finding of the court and therefore the conviction to be unsafe.

[19] It was submitted that:

(a) exh P81 and exh P107 are actually the same but the changes to the time 0420 hrs was to 1240 hours and 1250 hrs respectively; and

(b) exh P82 and the document D106 appear the same except while in both instances the times the report was made had been changed from 0445 hours to 1330 hours, the time they went to Kedai Emas Sin Hin was 1245 hrs in exh P83 while it was altered to 1315 hours in D106.

[20] To our minds since it is not shown how in this instance a time difference of 10 minutes is material, the difference is irrelevant. As between exhs P82 and D106, the document produced is exh P82, and the sole change to 0445 hrs to 1330 hrs is plain and visible to see, while D106 is less obvious.

[21] *Borang bongkar* exh P18 is in respect of the search at Kedai Emas Sin Hin. It is clear it was carried out at 1245 hrs on 30 May 2006. That being the case, exh P82, that at 1245 hrs they went to Kedai Emas Sin Hin and made the report in exh P82 is not altogether contradictory.

[22] Counsel referred to the station diary at RR6:246-262 of the record of appeal and pointed out serial 9320 at RR6:250 that the appellant was taken out of the station at 1605 hrs. We observe RR6:250 is page 115 of the station diary but pp 112–114 are not in the record of appeal. The crucial time 1200 hrs to 1330 hrs were not covered. There is no basis to consider the matter raised.

[23] We conclude that grounds 1 and 2 must fail.

GROUNDS 3 AND 4

[24] In this part, counsel referred to various deficiencies in the evidence:

(a) exh P30, a 'surat pengakuan' used by Kedai Emas Sin Hin and dated 22 May 2006. The point raised is whether this can be admitted as it contained no name and address, and only a photocopy of the identity card of the appellant (exh P32) was attached to it;

(b) search list exh P100 with the complaint carried no date and time; and

(c) exh P44, a Kuantan police report dated 29 May 2006 that the money found on the appellant was RM3,158, but the total sum shown by the currency listed at 'lampiran A' attached to it showed a total of RM3,008.

[25] We noted there was oral evidence to explain that RM150 in RM10 denominations were not recorded. More to the point is that the material part of the evidence was that the 30 pieces of currency in RM100 denominations corresponded with the RM100 currency notes in the ransom payment recorded by the police.

[26] It was also submitted that:

(a) exh P58 is a record of investigation by L/KPL 143331 Nik Fazree bin Nik Mustafa. It was not signed;

(b) exh P177 is a cautioned statement by one Masliana bte Harun KP: 821204-01-5350, produced through SP27 (RR4:731, 735). It was argued the appellant had no opportunity to cross-examine her; and

(c) exh P80, a piece of wood showed no signs it was used by the appellant.

[27] It was submitted that in the light of the above, the learned judge erred in finding that the defence was only of denial.

[28] We observe that the cautioned statement was admitted subject to cross-examination. When the maker of it was not called, it became of no probative value. It is not a case of denial of an opportunity to cross-examine. As to the other deficiencies, the relevant witnesses were called and could have been cross-examined thereon if the point was material. Where it is only raised on an appeal, it is an afterthought that cannot be considered when the opportunity to examine it earlier was not exercised.

[29] We therefore dismissed grounds 3 and 4.

Ground 5

[30] It was submitted, relying on the above, the elements of murder were not proved. Ground 5, as submitted upon briefly is not a ground of appeal in the strict sense, only is a conclusion from the earlier submissions. It is not necessary to repeat the foregoing. For the reasons given above, we reject ground 5 as submitted.

A CONCLUSION

[31] We therefore dismissed the appeal and affirmed the conviction and sentence passed by the High Court.

B *Appeal dismissed and conviction and sentence affirmed.*

Reported by Ashgar Ali Ali Mohamed

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